



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 10, 2003

Mr. Claud H. Drinnen
First Assistant City Attorney
City of Amarillo
P. O. Box 1971
Amarillo, Texas 79105-1971

OR2003-0214

Dear Mr. Drinnen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174838.

The City of Amarillo (the "city") received three requests from the same requestor for copies of information pertaining to a specified person. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure pursuant to the common-law right to privacy. Information must be withheld from disclosure under the common-law right to privacy when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). We note that in one of the requests the requestor in part seeks copies of unspecified information in which the specified individual is identified. Therefore, this part of the request requires the city to compile reports relating to this individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individual's right to privacy to the extent that it includes arrests and investigations where the named individual is a suspect in a case. Accordingly, we conclude that to the extent that the city maintains information that is responsive to this part of that request that reveals that the specified individual is a suspect, arrestee, or defendant in a case, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You claim that the remaining requested information is excepted from disclosure pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code. Section 552.101 also encompasses information that is protected from disclosure by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c).

Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). This office previously concluded that section 58.007, as enacted by the Seventy-fourth Legislature, did not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. *See* Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential effective September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). The legislature chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code. We have marked the information at issue that is confidential under the former section 51.14(d) of the Family Code and, thus, must be withheld pursuant to section 552.101. However, the remaining information at issue pertains to juvenile conduct that occurred between January 1, 1996 and September 1, 1997. Thus, this information is not made confidential under either former section 51.14(d) or the current section 58.007(c) of the Family Code and, thus, is not excepted from disclosure under section 552.101 of the Government Code.

We note that the remaining submitted information contains a social security number that may be confidential under federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The city has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain this social security number. Therefore, we have no basis for concluding that it is confidential under federal law. We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing this social security number, the city should ensure that it was not obtained or is not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

We also note that portions of the remaining submitted information are subject to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the city must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

In summary, to the extent that the city maintains information that is responsive to the part of one of the requests that seeks copies of unspecified information in which the specified individual is identified that reveals that the specified individual is a suspect, arrestee, or defendant in a case, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The city must withhold the information that we have marked pursuant to section 552.101 in conjunction with former section 51.14(d) of the Family Code. A social security number that is contained in the remaining submitted information may be confidential under federal law. The city must withhold the information that we have marked in the remaining submitted information pursuant to section 552.130 of the Government Code. The city must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Dr. Saldivar', with a stylized flourish at the end.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/lmt

Ref: ID# 174838

Enc. Marked documents

c: Mr. Roy Shannon
3400 Angelus
Amarillo, Texas 79107
(w/o enclosures)